IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24565 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMJUBEN MERAMBHAI & 35 - Petitioner(s)

Versus

EXECUTIVE ENGINEER & 1 - Respondent(s)

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Appearance :

MR NITIN M AMIN for Petitioner(s) : 1 - 2, 2.2.1,2.2.2 - 3,3.2.1 - 4,4.2.1 - 5, 5.2.1, 5.2.2,5.2.3 - 7, 7.2.1, 7.2.2,7.2.3 - 8, 8.2.1, 8.2.2, 8.2.3,8.2.4 - 10,10.2.1 - 15, 15.2.1, 15.2.2, 15.2.3,15.2.4 - 16, 16.2.1, 16.2.2, 16.2.3,16.2.4 - 17,17.2.1 - 22, 22.2.1, 22.2.2, 22.2.3, 22.2.4,22.2.5 - 24, 24.2.1, 24.2.2, 24.2.3,24.2.4 - 25, 25.2.1, 25.2.2, 25.2.3, 25.2.4, 25.2.5,25.2.6 - 26, 26.2.1, 26.2.2,26.2.3 - 27,27.2.1 - 29,29.2.1 - 31,31.2.1 - 36, 36.2.1, 36.2.2, 36.2.3,36.2.4
SERVED BY RPAD - (N) for Respondent(s) : 1,
Mr S P Hasurkar, Asstt.GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 14/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr S P Hasurkar, learned AGP waives service of notice of rule on behalf of the respondents. At the request of the learned Advocates for the parties, the matter is taken up for final hearing today itself.

2. It is the grievance of the petitioners that though the Reference Court namely; District Court, Ahmedabad (Rural) has granted their application being Civil Misc.Application No.15/02 preferred in Land Acquisition Reference Cases No.601 to 642 of 1989 and 203 of 1990 and directed the respondents to pay interest on the amount of solatium in July, 2003, the same has not been paid till this date. It is their say that when the respondents have not challenged the said order of the District Court, it has become final and the amount of interest is required to be paid by the respondents within reasonable time from the date of the order but the same has not been done.

3. According to the petitioners, their lands were situated at Village Sarangpur, Taluka Dhandhuka (now Barwala), District Ahmedabad and for the purpose of Khambhada Irrigation Scheme they were acquired under the provisions of the Land Acquisition Act (for short, 'the Act') in the year 1985. After the completion of the proceedings, the Land Acquisition Officer made award on 9.3.1989 and determined the rate of compensation. Since the petitioners were not satisfied with the rate of

compensation determined by the Land Acquisition Officer, they preferred application under section 18 of the Act seeking reference to the District Court for enhancement of the compensation. Subsequently, their applications were accepted and the references were made being LAR Cases No.601 of 1989 to 642 of 1989 and 203 of 1990. At the end of the proceedings before the learned Joint District Judge, Ahmedabad (Rural) at Mirzapur, the award was made on 18.9.1995. The learned Judge partially granted the award and determined the rate of compensation by awarding additional amount of Rs. 13/- sq.meter. The State of Gujarat, being aggrieved by the said judgment and award, preferred First Appeal being First Appeals No.4288 to 4330 of 1996 before this court. The same were dismissed by this court by its judgment dated 26.12.1996. It is the say of the petitioners that the respondents deposited the amount of Rs.2,85,46,060/- towards compensation awarded by the District Court. That amount was deposited on 1.7.1998. It also included the amount of interest on solatium being Rs.44,39,062-95 for the period between 16.6.1983 and 20.5.1998. The amount of solatium awarded by the Reference Court was Rs.20,73,518/-. It is the say of the petitioners that at the time when the amount was deposited, the question with regard to payment of interest on solatium was pending for consideration before the Apex Court. The said amount i.e. the amount of interest on solatium was

subsequently withdrawn by the respondent from the Bank with the permission of the District Court somewhere in December, 1999. It appears that in the meanwhile, the Apex Court delivered a judgment in the case of *Annie Varghese & Ors v. State of Kerala & Ors,* reported in (1999) 6 SCC 551 whereby the rights of the claimants were reserved till the issue regarding interest on solatium was decided so as to claim interest on solatium in case the issue was decided in affirmative. It also appears that subsequently, in the case of *Sunder v. Union of India, reported in 2001 (7), SCC 211,* the Apex Court decided the issue and held that the claimants were entitled to receive interest on solatium. In view of the same, the petitioners addressed a notice to respondents on 20.10.2001 calling upon them to deposit the amount of interest on solatium. It further appears that the respondent did not deposit the amount and therefore the petitioners preferred petition before this court being Special Civil Application No.2057 of 2002 which was disposed of by order dated 11.2.2002 and the petitioners were directed to submit application to the District Court within 30 days. In view of the said order, the petitioners submitted application being Civil Misc.Application No. 15 of 2002 on 6.3.2002 praying that the respondents be directed to pay interest on solatium. The learned Joint District Judge, by order dated 17.7.2003 directed respondent no.1 to redeposit the amount which was withdrawn by

them within 90 days from the date of the order, failing which to pay interest @ 9% per annum on the said amount. According to the petitioner, the total amount together with interest required to be deposited by the respondents as on 16.12.2005 is Rs.57,82,677-93.

4. We have heard Mr Nitin Amin, learned Advocate for the petitioners and Mr Hasurkar, learned AGP for the respondents. We have also carefully perused the record of the petition. It is submitted by Mr Amin that when the amount of interest on solatium has already been deposited by the respondents, there was no need to withdraw it since the issue with regard to payment of interest on solatium was pending for consideration before the Apex Court. It is submitted by him that now the law is very clear and the Apex Court has in terms decided that interest is payable on solatium. Therefore, the respondents cannot withhold the said amount. He has also submitted that the reasons advanced by the respondents that they are not liable to pay interest amount because after the passing of the award, the total compensation amount was already deposited by them, is not legal. As against that Mr Hasurkar has submitted that the petitioners have already preferred execution proceedings in support of the award amount and therefore, such petition is not maintainable.

5. There is no dispute to the fact that the respondents have already deposited the amount of interest on solatium together with the

compensation for the land and the solatium amount. But the same was thereafter withdrawn. When the petitioners preferred application namely; Misc.Civil Application No.15/02 seeking redeposit of the amount by the respondents and when the same was decided by the second Joint District Judge, Ahmedabad in favour of the petitioners, the respondents, if they were dissatisfied with the order, ought to have challenged it before higher forum. The same has not been done. Their challenge to the main award has also been turned down by this Court by judgment dated 26.12.1996 by dismissing the appeal of the State. The judgment of this court is also not challenged before the higher forum. Thus, all the aforesaid decisions passed in favour of the petitioners have become final. The respondents, therefore, at this stage, cannot raise a dispute that interest on solatium is not payable in the present case.

6. The petitioners have placed reliance on two decisions of the Apex Court referred to above. In the case of *Annie Varghese v. State of Kerala(supra),* the Apex Court decided that till the time the issue was resolved, the claimants' rights remained reserved to claim interest on solatium. Subsequently in the case of *Sundar v. Union of India (2001) 7 SCC 211* (supra), the Apex Court decided the issue and held that the claimant is entitled to receive interest on solatium. If that be so, when the petitioners' application is allowed by the Reference Court and when the

said order has become final, it is now not open for us to examine all these issues on merits. Suffice it to say that by virtue of the order of the learned 2nd Joint District Judge, the respondents are required to deposit the amount of solatium with interest as per the directions of the learned Judge. They were required to do so within 90 days from the date of the order. However, though more than two and half years have elapsed, the same has not been done. In view of the same, we now direct the respondents to deposit the amount of interest on solatium together with interest as directed by the learned Joint District Judge vide order dated 17.7.2003. They shall deposit the same on or before 31.5.2006 before the Reference Court. Upon deposit of the amount, the Reference Court will be at liberty to disburse the same after due verification.

7. In the result, this petition is allowed. Rule is made absolute with no order as to costs. Direct Service is permitted.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp